

Sam Sheppard, Carl Coppolino, Captain Medina, the Boston Strangler—this famous criminal lawyer has defended them all. Now, in his explosive new book, he tells the stories behind his front-page trials, starting with the murder case in which he won his greatest victory. By F. Lee Bailey with Harvey Aronson

As an attorney, I specialize in criminal law. The word that comes closest to expressing what a trial lawyer ought to be is *renegade*. That's why most good criminal lawyers are loners. It has to be that way. Our system of law requires that mavericks stand for the defense. Otherwise, pity the poor accused. A lot of them walk into my office and say, "I have an indictment here that falsely accuses me of such and such. I'll pay you a big retainer and I'd like to know the date on which I'll be acquitted." I tell them that they've spent too much time watching Perry Mason; they think they're hiring a magician instead of a lawyer. And I usually add some-

thing along the line of, "I suppose you think your innocence is a factor in the probable outcome of this case?" Invariably, the answer is "yes." Whereupon I explain that innocence does not guarantee a favorable outcome; in fact, as the "wheels of justice" grind on, it becomes progressively irrelevant.

So the defense lawyer has to be a maverick; he has to be willing to buck the system to make it work. I buck systems.

I was born June 10, 1933, in Waltham, Mass. My father was an advertising man forced to work for the WPA and my mother started a nursery school that became one of the largest in the state. I am married to my former secretary, whose given name is Frome but who is best known as Wicki, and we have a son, Scott Frederic, 7. I own a home in Marshfield, Mass.; I fly a 550-mph Lear Jet and a 300-mph Interceptor 400, and I keep an Enstrom helicopter at my home, which is a registered heliport. On land, I get around in a Lincoln Continental and a Cadillac.

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Sam and Marilyn in 1942. Sam conceded that they had had marital problems. But by the time of the murder, "We were surprising ourselves by how much in love we were."



Sam claimed he sustained neck injuries in struggle with the intruder who, he said, killed Marilyn. Could the injuries have been self-inflicted? Only if he had dived out a second-story window, testified the doctor who examined him.



I'm five foot nine, stocky, with square shoulders, a barrel chest and a short neck. I have blue eyes, brown hair, a broad face, and according to one writer, "a slightly gamey

handsomeness, so that one might cast him as the hard-drinking, womanizing private eye in a low-budget television serial." I wear a mink coat with what I like to think is a certain élan, I smoke a lot, I drink hard without getting drunk, I have been known to curse. On a list of the world's sexiest men, a woman author of some fame in these matters rated me number four—right above Richard Burton and below Burt Bacharach, Sidney Poitier and Pierre Trudeau. (I make no value judgment; I'm just repeating the information.)

My law firm, Bailey, Alch and Gillis, is in Boston, but I have associates in almost every state. I have no bias against legitimate publicity, and I prefer cases that offer whopping fees and/or professional challenge. Our fees have ranged from zero to close to a million dollars. (We recently sent out a bill for the latter amount, and I expect that someday we will collect it all.) About 30 percent of our cases end up in the red—either because the expenses outweigh the fee or because the clients don't have the money. Captain Ernest Medina is a case in point; the government gave him \$79 for his defense [against charges that he had ordered Vietnamese civilians killed at My Lai].

My route to the criminal bar was far from normal. When I graduated from prep school and was accepted at Harvard College, my ambition was to become a writer. I was 16 and unfortunately—or, perhaps, fortunately—about as capable of

academic dedication as a drunken grasshopper. After two years of getting by on "Gentlemen's C's," I joined the Navy and underwent 18 months of flight training at Pensacola, Fla.

Next, two things happened that pushed me from literature to law. I read *The Art of Advocacy* by Lloyd Paul Stryker, an eminent New York trial lawyer. The book was an effort to interest young men in trial skills. It interested me.

The second thing was that after graduating as a naval aviator, I transferred to the Marine Corps because I wanted to fly jets. I was assigned to a fighter squadron in Cherry Point, N.C. As my secondary duty (such duty was required of every pilot-officer), I asked to be, and was, made second assistant legal officer. When the first assistant legal officer died in a jet crash, the chief legal officer's wife threatened to leave him unless he gave up flying. Shazam! Lt. Bailey was the new chief legal officer.

For the next two and a half years I prosecuted, defended, judged, reviewed and investigated cases—all within the framework of the military court-martial system. In the course of checking civilian court proceedings involving Marines, I became friends with a local trial lawyer, Harvey Hamilton, of Morehead City, N.C. I moonlighted as an investigator and apprentice for Harvey. He was the first teacher I ever had, and one of the best.

After my discharge, I marked time at Harvard for the several months it took to obtain a waiver of the minimum requirements so that I could attend Boston University. In September 1957, I began the formal study of law. And the same day school began, I opened a business called "Investigative Service." My service flourished. By the time I graduated three years later, I had three

associates. We had turned out more than 2,000 investigations into cases of every sort—criminal, probate, divorce and personal injury. The money helped, and I supplemented my school work.

A good investigator is often worth more than a good lawyer. Investigation has helped in many of my most famous cases—in my defense of the Boston Strangler, for example. Without investigation, I would not have won Dr. Carl Coppolino's acquittal in New Jersey, and I would not have been able to trump the government's evidence in the case of the \$1,551,277 Great Plymouth Mail Robbery. But most of all, I would say that without investigation I would never have been able to win a retrial for Dr. Sam Sheppard, a retrial that led to his exoneration.

On November 18, 1961, two days after the first anniversary of my admission to the bar, I was in the visiting room of a Marion, Ohio, prison talking to Samuel H. Sheppard. He had already spent more than seven years in jail for a murder he never committed. From our first handshake, I believed in his innocence. More than five years later, I finally got him the two things he wanted most—freedom and vindication.

The crime for which Dr. Sam was imprisoned was the slaying of his pregnant wife, Marilyn, on July 4, 1954.

The son of an osteopathic surgeon, Sam grew up on a tree-lined street in Cleveland Heights. As a high school senior, he was voted both class president and outstanding athlete. He attended Western Reserve University and the Osteopathic School of Physicians and Surgeons in Los Angeles, and he served a residency in neurosurgery at Los Angeles County Hospital. In 1951, he went

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Basically, this was Sam's story: As he entered the bedroom, he heard Marilyn moaning and saw a "white form" or someone in a "white garment." He could not tell whether it was a man or a woman. Then it seemed as if he were struck from behind. Some time later, he came to, facing the bedroom doorway. He was sitting up, and he spotted the gleam of his police badge on his wallet, which was lying on the floor. As he leaned over to pick it up, an intense pain ripped through his neck. He went to the bed, where Marilyn lay in a welter of blood, looked at her and took her pulse. His vision was blurred, but it seemed to him that she was dead. Still not fully conscious, he ran into Chip's room, which was adjacent to the murder scene, and somehow assured himself that the sleeping youngster was O.K.

As he left Chip's room, he heard a noise downstairs, seemingly in the front part of the house, which faced the lake. He hurried downstairs and caught sight of a figure between the front door of the house and the screen door of the porch, or possibly just past the screen door. Apparently both doors were open. He ran toward the figure, but lost sight of it on the steps leading to the beach. When he got to the beach house landing, he saw the figure on the shore. He raced down the last few steps and tackled the intruder. His impression was that he was grappling with a man with a large head. There was a short struggle, and he felt as if he were being choked.

Trapped in a dream

His next memory was of coming to on the beach with his feet in the waves and his head facing the shore. Somehow, he made his way back into the house and staggered up the stairs to the blood-spattered bedroom. He looked at Marilyn again, and felt in vain for the pulse on her neck. He was disoriented; he felt as if he were trapped in a terrible dream. He may have walked about and rechecked his wife.

Finally, the truth of her death sank in. He went downstairs trying to think of what to do, whom to call. Then Spencer Houk's number popped into his mind, and he called him. The Sheppards and the Houks were not as close as they once had been, but in his capacity as police surgeon, Sam still saw the mayor frequently. And the Houks only lived a few hundred feet away. According to Houk, the call came at 5:45 A.M. "For God's sake, Spen, get over here quick," Sheppard said. "I think they've killed Marilyn."

Houk and his wife Esther dressed (he said he finished first and waited for her in their car) and in five to ten minutes arrived at the Sheppard home. Esther went upstairs while Houk stayed in the den with Sam, who was bare to the waist, his trousers still soaking wet and his face bruised and swelling. Drawers had been pulled from Sam's desk, and articles from his medical bag were strewn on the floor. Houk said he asked Sam what had happened, and Sheppard answered, "I don't know exactly but somebody ought to do something for Marilyn."

Upstairs, Esther Houk walked into a room dominated by blood; it stained

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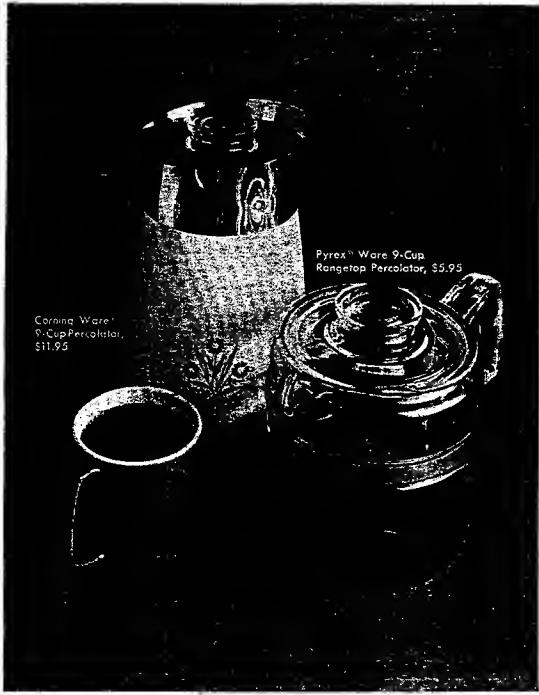
the walls and floor, spotted the spread on Sam's otherwise undisturbed bed, and gathered in pools on Marilyn's body, where she lay dead with her pajama top rolled up around her neck, her head and face crimson with cuts. A coroner's report would show that Marilyn suffered 35 separate wounds, most of them on the face and head, some on the neck and hands. Death was due to multiple blows to the head and face, which caused fractures of the

skull and hemorrhage above and inside the brain. Esther hurried downstairs and shouted to her husband to call for help. Houk phoned the Bay Village police at 5:58 A.M., and then called Sam's brother, Richard, who arrived at 6:10.

Seconds after he arrived, Richard obtained a knife from the kitchen and ran upstairs, thinking that perhaps Marilyn could be revived with cardiac massage. But he saw that nothing could

be done, and returned to the den. "She's gone, Sam," he said.

Their subsequent conversation became vitally important during the miserable excuse for a trial that ended in Sam Sheppard's conviction. Houk damned Sam by claiming that Richard said either, "Did you do this?" or, "Did you have anything to do with this?"—and that Sam answered, "Hell no." Richard's denial was vehement. "I am positive I never said such (continued)



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a thing," he testified. "I could not have because it never entered my mind that my brother could have killed his wife." Nor did Sam remember any such question and answer; he said the gist of Richard's comments was that he should try to pull himself together and remember what had happened.

Cleveland police were called, and Steve Sheppard and his wife, Betty, also arrived. The brothers examined Sam, who had suffered broken teeth as well as a severe neck injury. Then Steve and Betty drove him to Bay View hospital. The press and local scuttlebutt made this into a state—if not federal—case by claiming that the Sheppards spirited Sam away and kept him immune from investigation in the family hospital. It didn't matter that police at the scene made no objections as Steve drove off with Sam, or that authorities were able to question Sam three times on the day of the murder, or that one Cleveland detective accused Sam of the slaying before the day was over. ("I don't know what my partner thinks," said the detective, "but I think you killed your wife.") Nor did it matter that police put him through a full-scale grilling four days later at the hospital, without the presence of Sam's lawyer, William Corrigan, a veteran Ohio trial attorney. No matter what, the stories persisted—all of them blasting out the theme that Sam was wealthy enough and influential enough to get away with murder.

The leader of the rat pack nipping at Sam's heels was one of Ohio's most influential citizens, Louis B. Seltzer,

editor of the state's largest newspaper, the *Cleveland Press*. Almost from the beginning, Seltzer seemed sure that Sam was guilty.

Papers throughout the country featured the case, but the *Cleveland Press* editorials wallowed in new lows. On July 16, "Mr. Cleveland," as Seltzer was sometimes called, really got the *Press* rolling with an editorial entitled "The Finger of Suspicion." In it, the paper said the murder probe was being stymied by "the hostility of Bay Village officials to any 'outsiders' in the case," and "the unusual protection set up around the husband of the victim...." The editorial blamed this protection on Sam's lawyer, Corrigan. The *Press* said the first step that should be taken was a meeting of all law enforcement agencies involved. A meeting was held the next day, and Cleveland Mayor Anthony J. Celebrezze suggested that the city police department take full charge of the case.

Incriminating editorials

On July 20, Seltzer struck again. This time, the editorial consumed the top quarter of page one—running beneath the five-column headline: CERTAIN AWAY WITH MURDER. Seltzer wrote the editorial himself. Again, he got results. That night, the Bay Village council passed a resolution setting up a \$5,000 fund for the murder investigation and instructing Houk to ask the Cleveland police to take over.

On July 21, the papers called for an inquest. The *Press* led the charge with an editorial entitled: "Why No Inquest? Do It Now, Dr. Gerber." The next day, Cuyahoga County Coroner

Samuel Gerber got a three-day inquest under way. During the hearing, Sam's attorney was ejected from the room while spectators saw him off with cat-calls. If he was the villain, Gerber was the hero. At the conclusion of the inquest, the white-haired coroner was surrounded by women, some of whom kissed him.

On July 26, the *Press* ran a front-page editorial: "Why Don't Police Quiz the Top Suspect?" And on July 30, Seltzer published another of his personal compositions. At first, it was entitled, "Why Isn't Sam Sheppard in Jail?" Then, in the final edition, the headline was changed to: "Quit Stalling—Bring Him In." That night, Sam Sheppard was arrested at his parents' home. It was carnival time in Bay Village as the public ran wild on the lawn and news photographers took flash pictures through the windows of the house. As the police led Sam out the front door, a path had to be cleared to their car. The people cheered.

The grand jury indicted Sam on August 17, and his trial opened a month later. The verdict, guilty of second-degree murder, came as no surprise. On December 21, Judge Edward J. Blythin sentenced Sam to life imprisonment.

Less than a month after his conviction, Sam Sheppard's mother shot herself and his father died of cancer. And only after the trial was over, when authorities turned the keys to Sam's house back to Corrigan, were his attorneys able to gather evidence. Corrigan hired Dr. Paul Leland Kirk, a nationally known criminologist from the University of California, who

turned up some fascinating evidence pointing toward Sam's innocence. For instance, he determined that the killer was left-handed (Sam was right-handed), and that a large spot of blood on the closet door was neither Sam's nor Marilyn's. But petitions for a new trial on the basis of Dr. Kirk's findings were turned down by the courts, as were other appeals through the years.

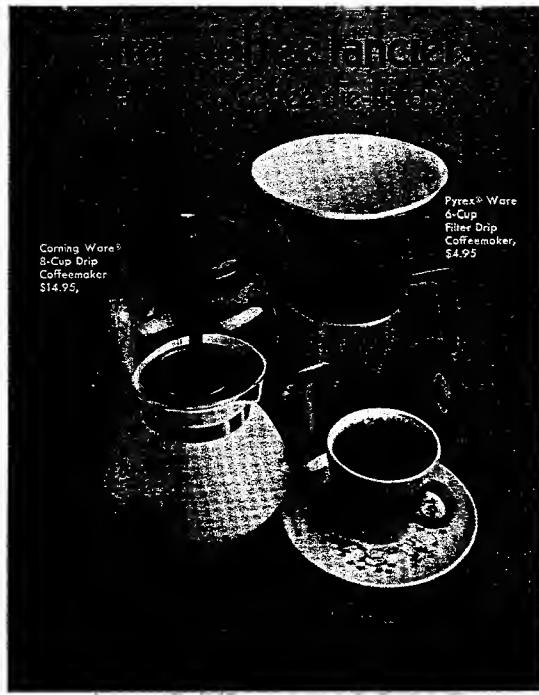
In jail, Sam wrote his son, worked as a \$4-a-month surgeon, and participated in a research program by allowing doctors to inoculate him with live cancer cells. He took part in athletics, made and sold religious jewelry, and earned the respect of his fellow convicts.

He survived, but the years in jail were gnawing at his personality. He was in prison for something he didn't do. Think about that; think about what it must be like to spend time in prison for no reason. Think about what it must have been like to be Sam Sheppard, the man who had everything and then woke up one morning to find himself pinwheeling in a void that got blacker and blacker.

"Ohio doesn't want the truth"

In August 1961 I was in Chicago, lecturing on the legal aspects of the lie detector at the Keeler Polygraph Institute. Paul Holmes, author of a just-published book, *The Sheppard Murder Case*, had made inquiries at the school for a lawyer who could supervise a lie detector test for Sam. He was referred to me.

As my battle to free Sam developed, Paul would become both a valuable consultant and a good friend. A lawyer as well as a journalist, he had a pro-



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nounced talent for distilling fact from hearsay and conjecture. "Ohio doesn't want the truth about Sam Sheppard," he said, "because the truth might hurt. Unless you understand that, you won't be able to help him."

I read Paul's book, and I was impressed by what the State of Ohio had done to Sam Sheppard.

That November, Paul gave me a letter of introduction to Steve and Richard Sheppard and recommended they ask me to work on Sam's case.

I flew to Cleveland, where Steve Sheppard met me at the airport. We stayed up until after midnight discussing the possibility of obtaining a polygraph test for Sam. I said that if I couldn't force one by bringing public pressure on Ohio's Governor Michael DiSalle, I might be able to do it through court action.

Surprisingly spirited

Steve and I were up at six the next morning. We drove to Marion to see Sam. When he came into the visiting room, I was surprised. I had not expected him to be as spirited or, for that matter, as well conditioned as he was. In the interests of both his emotional and physical health, Sam followed a routine of regular exercise in jail. He played on prison football, basketball and basketball teams, won a wrestling championship, and lifted weights. It was also a matter of self-protection. On one occasion he had to slug a male nurse who tried to steal sodium pentothal during an operation.

That first visit with Sam lasted a couple of hours. Bill Corrigan had died the past summer, and Sam needed a

lawyer. He was understandably dubious about our chances of success, but he was more than willing to take a lie detector test. And he was grateful that someone was willing to try a new tack for him.

After taking the case, I suggested to Steve Sheppard that I see Louis Seltzer. "Look," I said, "the bad guys in this are obviously Seltzer and his Cleveland Press. I have a feeling that when we ask Mike DiSalle, who is a very humane man, to permit this lie detector test, Seltzer is going to tell him not to allow it, and Mike is going to turn me down. Let me go to Seltzer before Mike makes the decision. If you show a man a way to be a winner, he'll usually listen. I'll tell him, 'Mr. Seltzer, why don't you back this test? During the investigation, Sam refused to take a test suggested by police. I think he had good grounds, but your paper made hay out of it. So now you could back a test, and say that you were always in favor of reaching the truth. If Sam flunks, it vindicates your entire position. And if he passes, you're completely protected.' I think Seltzer might go along with it."

"If Louis Seltzer walks out of this clean," said Steve, "it's going to be tough to swallow. But I'll buy your plan."

I called Seltzer. "Sir," he said, "why do you seek me out in this matter? I have nothing to do with the Sheppard case."

"Historically," I said, "you've had a great deal to do with it, and I think your influence is still considerable."

Seltzer made an appointment for me to see him at his office. I outlined

my position, and Seltzer listened very carefully without saying anything. His editors did the talking. And they certainly weren't going to go along with anything I said.

When they were through, I wasn't shaking, but I was close to it. "Mr. Seltzer," I said, "there's something I want you to know. You have almost every advantage in this case that a man could have, and now you're my real opponent. You're going to influence the governor to make an unfair and unjust decision if you can. You're probably going to win at least the first three rounds. But I want you to beat this in mind. You're an old man, and I'm twenty-eight. I've got more stamina than you, and more imagination. You've got the money and the influence, but somehow, someday, I'm going to beat you. And when I do, I'm going to hold you up to scorn and ridicule. And you better hope you die before I do it, because then I'll only be destroying your image instead of you as a person. That's what you have facing you, and that's the price you paid by turning down an honest man who made you a reasonable offer."

No power to intervene

The polygraph request was rejected by the warden at Marion, by the state commissioner of correction—and by Governor DiSalle.

The next step was to carry the lie detector battle into court. On December 27, 1962—almost a year after I had become Sam's attorney—I got my answer. The Ohio Supreme Court said it had no power to intervene, that the question of letting polygraph experts

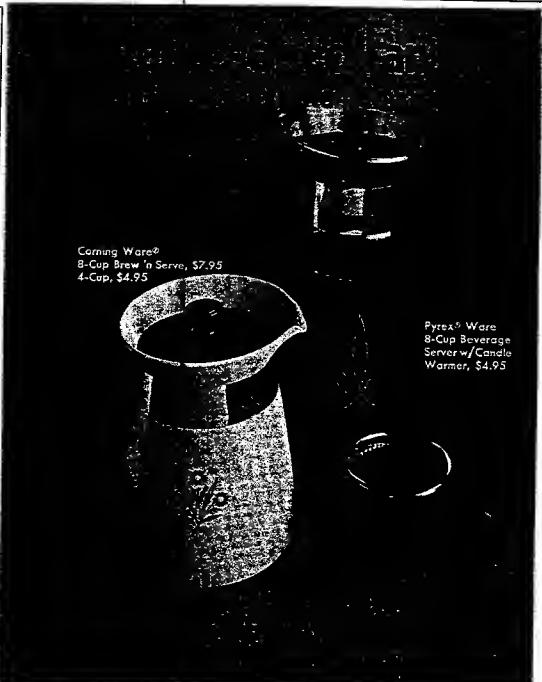
into the prison was strictly a matter for the warden to decide.

My prime reaction was anger. All right, so they wouldn't let us have a lie detector test. We had gone as far as we could go in the state courts, and we had gotten nowhere. Now we would go all the way in the federal courts. We would attack the original conviction. I would seek a writ of habeas corpus charging that Samuel H. Sheppard had been deprived of his constitutional rights.

I hired three Harvard Law School students—the two who stuck with it were Steve Hoskins of New Jersey and Don Sweeney of Maine—and started them off by giving them copies of Paul Holme's book, "Read the book, boys," I said, "and then I'll tell you the claims of error I want to bring on a constitutional basis." There were also 9,808 pages of trial testimony and briefs to go through. Steve and Don did a marvelous job.

At this point in the Sheppard case, the *fact of Sam's innocence* was of no help to him. All factual questions had been settled—rightly or wrongly—by the jury that convicted him. Sam could win his freedom only if we could show an error of law—a mistake that violated the U.S. Constitution.

It took Steve and Don almost two months to furnish me with the necessary material. Then I started typing out a 29-page complaint of habeas corpus. The complaint represented the first time anyone had accused the Scripps-Howard newspaper empire of causing damage to Sam. And it named Louis Seltzer—something else that had not been done before. (continued)



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1957, leaving Ariane with a 4-year-old daughter.

In 1954, Ariane read about Sam Sheppard in a magazine. She decided that Sam was being pilloried by the press, that he was being railroaded into jail because he had been unfaithful to his wife and because he was well-to-do.

The case became a recurring thought in Ariane's mind so that in the winter of 1959, she decided to see if she could contact Sam himself. She wrote Steve Sheppard at the Sheppard Clinic, asking if she could communicate with Sam. It was not the first letter Steve had received from a woman seeking to correspond with Sam, who was then imprisoned at the Ohio Penitentiary in Columbus, but somehow Ariane's letter seemed different. There was a sense of taste to it, a certain dignity. At Sam's request, Steve wrote her: "I regret that Dr. Sam is unable to receive letters directly from you nor is he able to answer you, but if you will allow me I shall be pleased to carry messages to him when I visit him each month. Perhaps he will want me to write you on his behalf from time to time."

And so a three-cornered correspondence began. In 1961, Sam was transferred to Marion, where he was allowed to write Ariane directly. However, her letters—written in white ink on parchment-like red paper—still had to go through Steve; she was not permitted to send them to Sam at the prison until 1962.

As the correspondence survived, the relationship between two lonely people became stronger. Sam kept Ariane's most recent letter with him constantly, reading it as often as six times a day. He also carried a lock of her hair. When he sent her a picture and unconsciously signed it, "all my love," he realized that he was caught.

In January 1963, Ariane Tebben-johanna arrived in the United States. Her most prized possession was a letter giving her permission to visit Sam Sheppard.

Shortly after midnight on January 24, Ariane arrived in Marion. At nine o'clock that morning, she showed up at the prison with a dozen fresh doughnuts and a bag of bread and sandwich

makings. Sam didn't know she was arriving that day, and he thought he was being kidded by the guard who came to tell him that a fine-looking blonde in a mink coat was waiting for him in the visiting room. When he walked into the room and saw her, he grinned and asked for a kiss. Ariane kissed him on the cheek, and he knew she was real.

Ariane's reaction? "As soon as I saw him," she would tell Steve Shep-

pard later, "I knew that he loved me, and that I loved him."

Sam had not touched a woman's hand or smelled feminine perfume for more than eight years. And in a literal sense, Ariane was meeting the man of her dreams. But if sex was in the wings, it had to stay there. This was a fairy tale. Sam gave Ariane a dove on a silver chain that he had made in prison. Ariane gave Sam an Indian-head gold piece on a golden chain. The

exchange of gifts symbolized their engagement. It may have been the best moment of their lives.

A week later, a hearing was held before the Ohio Pardon and Parole Commission on a clemency petition the Sheppard family had initiated before I entered the case. Steve called to tell me about the engagement, and asked if it would be all right for Ariane to attend the hearing. I have never been a man to stand in the way (continued)



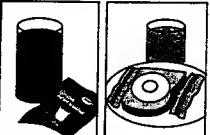
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of true love, and I said, fine. But rather than pull a total surprise on the press, Steve revealed the news about Ariane and the engagement a day before the hearing. The result was a flood of phone calls. When I brought Ariane to the commission headquarters for the hearing, the press coverage was the sort of thing usually reserved for new movie stars and visiting royalty.

The next day, the publicity turned sour. The press found out that Ariane's half-sister had been the wife of the infamous Dr. Goebbel. The implication was clear. The woman who had come from Germany to see Sam was probably a Nazi, too. And the romance was just a publicity stunt.

Two days after the hearing, the Pardon and Parole Commission voted unanimously not to recommend clemency for Sam. Consequently, Governor

James Rhodes turned down our petition. And State Corrections Commissioner Maury Koblenz forbade further visits by Ariane and deleted her name from Sam's mailing list. "You better send that blonde back to Europe," he said.

The day after Koblenz' visit, Steve and Betty Shepard visited Sam and brought along a couple of engagement rings. Sam picked one out, and Steve gave it to Ariane that evening.

Ariane returned temporarily to Germany, where she soon received a black bra and panties that Sam had a freed convict buy and send to her. "It was my way of saying to her that I wasn't a vegetable anymore," Sam later explained. In May, for her birthday, Sam reverted to traditional imagery—he saw to it that she received 26 long-stemmed red roses.

In July, Ariane rented an apartment in a Cleveland suburb, and purchased two cars—one for herself and another for Sam. She got license plates for Sam's car, and kept it ready.

Finally, on January 17, 1964, the battle for Sam's release came before Judge Carl Weinman.

As the weeks passed, the feeling began to grow that we would win. It became obvious that the state was worried. On February 24, no less an old Sheppard adversary than Cuyahoga County Coroner Samuel Gerber announced that he was recommending to the state attorney general that Sam be given parole when his case came up in the fall. What's more, said Gerber, he would not oppose an earlier parole. Then Louis Seltzer's Cleveland Press joined the sudden forgive-and-forgive movement by recommending that penal authorities match the coroner's "objectivity." Around this time, messages were transmitted to Sam through the prison chaplain saying that all he had to do to get out was file another plea for clemency with the parole board. Luckily, the chaplain oversold the proposition; he had Sam believing that parole officials were begging him to accept clemency. Instead of filing a regular petition, Sam sent the board a short note that may have given a cavalier impression. It eventually drew a return notice saying that a rehearing of his parole appeal was not in order.

Parole vs. exoneration

I first became aware of the situation through a phone call from Steve Shepard. He said the state had communicated to Sam through the chaplain that if Sheppard unloaded me as counsel, they'd commute his sentence to manslaughter and let him out. It was obvious that somebody up there hoped that giving Sam parole would squash the habeas corpus action. But as far as I was concerned, Sam deserved exoneration as well as freedom. I called Ariane, who said she was going to tell Sam to go along with the deal—she wanted him out right away. I tried to convince her he was going to come out on the writ in the next few months, although I couldn't say just when. We had an argument, and Ariane found I could be as stubborn as she was. I told her that I was going to see Sam, and that I would do everything to counter her advice because she didn't know what she was talking about.

Meanwhile, I found out that a local attorney who had asked to come into the case with me was behind the deal. He intended to pop Sam out of prison and say it was all his doing, even though he had to have known in his heart that we were going to win the whole ball game.

The next morning, I was allowed a 15-minute visit with Sam. He said he knew my efforts had brought about the deal. But to be so close to freedom when the courts had failed him over and over again, he said, was an almost

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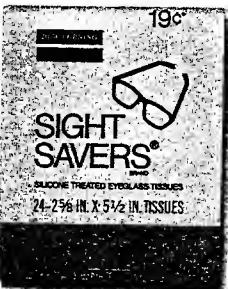
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(Illustration 3/4 actual size)

irresistible temptation. And then he asked a rough question.

"If I do it your way," he said, "can you guarantee I'm going to get out?"

"Ethically, I can't guarantee you anything," I said. "But I'm practically assuring you that you will, and that's a long way for me to stick my neck out. The judge is a lawyer and I'm satisfied that he's honest. No honest man could refuse you this writ."

Sam sat there, and I knew he was thinking about Ariane and Sam, Jr., and the world into which I would soon be returning.

"Look," I said, "if this judge doesn't act in your best interest, and there's a way to do it, I'll do the rest of your time for you—I'm that sure."

"Okay," he said, "I'll hang on."

On the way out, I stopped to chat with the warden. "If I find any chaplain or anyone else giving Sam messages of this kind again," I told him, "I'm going to have you as a defendant in federal court in an action to have you removed."

"Guilty as hell!"

On March 17, we got lucky. I was in New York for a panel discussion of attorney William Kunstler's book about the famous Hall-Mills case. The panelists included Dorothy Kilgallen, who had covered Sam's trial for the New York *Journal-American*. During the discussion, Kunstler mentioned that the Hearst newspapers had been slapped with a successful lawsuit as a result of their coverage of the Hall-Mills trial. "In that case," said Dorothy, "Sam Sheppard should collect fifty million dollars because he had the worst trial I ever saw." She said Judge Blythin had called her into his chambers for a chat just before the trial started, and that he told her Sam was "guilty as hell."

Some days later, we obtained a deposition from Dorothy that was submitted to Judge Weinman. Here's an excerpt from her statement:

He was very affable. He shook hands with me and said, "I am very glad to see you, Miss Kilgallen. I watch you on television very frequently and enjoy the program." And he said, "But what brings you to Cleveland?"

And I said, "Well, your honor, this trial."

And he said, "But why come all the way from New York to Cleveland to cover this trial?"

And I said, "Well it has all the ingredients of what in newspaper business we call a good murder. It has a very attractive victim, who was pregnant, and the accused is a very important member of the community, a respectable, very attractive man."

And I said, "Then added to that, you have the fact that it is a mystery as to who did it."

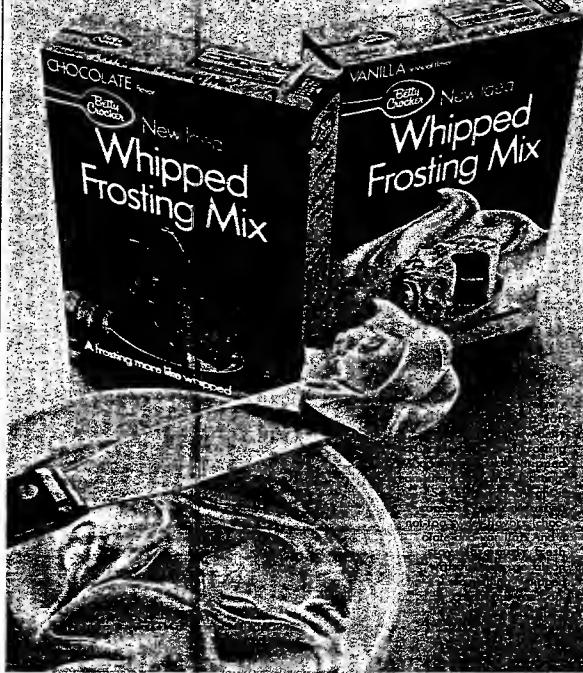
And Judge Blythin said, "Mystery? It's an open and shut case."

And I said, "Well what do you mean, Judge Blythin?" I was a little taken aback because usually, I have talked to many judges in their chambers, but usually they don't give me an opinion on a case before it's over.

And so he said, "Well, he is guilty as hell. There's no question about it."

On July 15, 1964, Judge Weinman handed down his decision in the Sheppard case and opened a new, if ultimately short-lived, chapter in a man's life. His opinion said in part: "The

Now, for people who like whipped cream more than frosting, a frosting more like whipped cream.



Court has considered the question of whether or not petitioner received a fair trial and in regard to that question has found five separate violations of the petitioner's constitutional rights, i.e., failure to grant a change of venue or a continuance in view of the newspaper publicity before the trial; inability of maintaining impartial jurors because of the publicity during the trial; failure of the trial judge to qualify himself, although there was uncertainty as to his impartiality; improper introduction of lie detector testimony, and unauthorized communications to the jury during their deliberations."

"Each of the aforementioned errors," ruled Judge Weinman, "is by itself sufficient to require a determination that petitioner was not afforded a fair trial as required by the due process clause of the Fourteenth Amendment. And when these errors are cumulated, the trial can only be viewed as a mockery of justice."

The judge did not rule on Sam's guilt or innocence; that was not the question before him. He ruled that Sam's conviction had been obtained unconstitutionally, and he threw it out. Because of what the judge called a mockery of justice, Sam Sheppard had spent 10 years in jail. Judge Weinman gave either the State of Ohio or Cuyahoga County 60 days in which to hold a new trial. And he ordered Sam's immediate release on \$10,000 bond. For Dr. Samuel H. Sheppard, who at 40 had spent one-fourth of his life in jail, the 86-page ruling could be summed up in a single word: Freedom!

Sam first heard the news from a fellow convict, whose face was wet with tears. "You made it," the convict said. "You made it."

"God damn," said Sam Sheppard.

As Sam got the news in jail, I was driving from my office to a yard in Boston, where I intended to work on my boat. My cars and most of my office and employees' cars are equipped with citizen's band radio connections. All of a sudden, my secretary came on the radio from my office. "KBC2646 Unit 1," she said. "This is your base. Judge Weinman in Ohio has just ordered the release of Sam Sheppard!"

Fill in your own war whoop! We still had a way to go, but by God, I had gotten Sam Sheppard out of jail!

I headed back to the office, where I arranged for Wicki and me to fly to Columbus the next morning, and for Richard Sheppard to meet me with a bondsman. When I arrived, it was communications central. I wouldn't see that many newsmen again until I held a press conference for Captain Medina six years later.

(continued)

F. LEE BAILEY *continued*

Sam was released shortly before noon on July 16, 1964. As he walked across the prison yard, cheering and applause swelled out of every section of the penitentiary. "Doc" was getting on; he should never have been in. That's one thing about prison; cons usually know when a man is innocent.

From the federal building, we drove to a motel in Columbus, where Ariane was to join us. Sam was like a kid at his first circus; he wanted everything. Little things that made you realize what it must be like to spend 10 years in prison. The first thing he did when he got to the motel room was order two large glasses of fresh orange juice. And he took his shoes and socks off and walked across the room so he could feel the carpeting beneath his bare feet. And a shower. "How long can I stay in the shower?" he asked.

"You can stay in until you shrivel up," I said.

Sam had been free for about two hours when we were told that Federal Judge Lester Cecil of the Sixth Circuit Court in Cincinnati had stayed Judge Weinman's order pending a hearing. The stay had been sought by the prosecutor. One rumor had it that bail had been revoked and that Sam had been ordered back to jail. I phoned Judge Cecil, and he said, "No, I didn't order him back to jail." But he had granted a stay.

Celibate for 10 years

Ariane's arrival presented us with another problem—one that was, to say the least, understandable. More than orange juice, showers and the feel of a rug against his bare feet, Sam wanted Ariane. She was a good-looking woman, he had been celibate for 10 years, and he was in love.

Actually, Steve Sheppard and I opposed the idea of Sam getting married the minute he got out of prison; we felt he should have time to take stock of himself. But we also knew that Sam's release had Louis Seltzer worried, and that Seltzer had a lot of clout. I was afraid that some people who wanted Sam back in jail would have him picked up for spitting on the sidewalk if they could. One of the rumors going around was that they were hoping to nail him on a fornication charge. So we went along with the idea of marriage.

The next day, we drove from Columbus to Chicago, where Paul Holmes had arranged for Sam and Ariane to be married by a magistrate.

The wedding was held in the bridal suite of a Chicago hotel; I was best man and Vicki was matron of honor. A few days later, all of us flew to New York, then to Cleveland where we had a late-night champagne party with

Dorothy Kilgallen, whose deposition had meant so much to us.

But although the prison gates had opened in a glitter of excitement, they were still threatening to close Sam in again. On July 23, we were back in court. The issue was whether Sam should be permitted to remain free on bail while the state appealed Judge Weinman's reversal of his conviction.

When the three-judge panel went out, one of the judges said they would

Ariane became pregnant, but she suffered a miscarriage Christmas morning. Sam felt it had been brought on by the strain they were living under.

By spring, I began to expect the worst. The decision was too long in coming. Sure enough, on May 5, 1965, the three-judge panel ruled two-to-one to upset the Weinman decision. Sam was ordered to return to prison within 20 days.

I immediately asked for a rehearing

The case was argued on February 28, 1965.

On June 6, 1966, while I was defending an accused bank robber in Worcester, Mass., a bailiff brought a note to the bench. The judge read it and stopped the trial. "Ladies and gentlemen, excuse me," he said, "but I want Mr. Bailey to know that he's won the Sheppard case."

The Supreme Court had voted 8-1—Justice Hugo L. Black was the lone dissenter—to overturn Sam's conviction. In a 29-page decision written by Justice Tom Clark, the high court ruled that Sam had been deprived of a fair trial.

Elated but nervous

For Sam, there was still one more hurdle. As part of its decision, the Supreme Court ordered the issuance of the habeas corpus writ and stipulated that Sam be released from custody unless the State of Ohio retried him within a reasonable period. Sam was elated by the court's opinion, but nervous over the possibility of a second trial. He didn't have much faith in juries, and you couldn't blame him.

I felt there was a good chance the state would decide not to retry Sam, but I was wrong. At a television press conference the new Cuyahoga County prosecutor John Corrigan announced that there would be a retrial. Sam and Ariane had watched Corrigan on television. Afterward, they walked to their apartment, where reporters were waiting. Sam told them he was ready to go on trial right away. Then someone asked if he'd take the stand.

"You're damn right," he said.

But it wouldn't happen. By the time the trial opened, I wouldn't dare let Sam Sheppard testify in his own defense.

The second trial of Dr. Sam Sheppard began on October 24, 1966—exactly 12 years and six days after the first one had started. For Sam, the gray building that housed the Cuyahoga County Criminal Court was hell revisited.

"They put me away once before and I didn't do anything," he said right before the trial. "They put me away in the face of evidence that I had a fractured neck and broken teeth, which I couldn't have given myself. My God, Lee, how can you show me that they won't do it again?"

I repeated what I had told him previously; that I felt sure he would be acquitted on the evidence. But I couldn't give him an absolute guarantee. "And in the unlikely event that they convict you," I said, "you're eligible for parole immediately. I expect they'd parole you rather than have you appeal." He nodded, but we both knew that parole would be a bitter substitute for acquittal.

Sam was in terrible shape. He was worried and fearful. And he and Ariane were having problems, one of them being a lack of money. Expenses alone were running to about \$50,000. This covered such items as expert testimony, pretrial investigation, more than 50 trips I'd made to Cleveland, and the printing costs for the eleven briefs I had written in the case. I'd been funding the whole thing myself. Ariane had arranged for a \$10,000 loan toward expenses from a relative in Germany, and was in Europe with her family. She would not return till the trial had opened.

In any event, I had to face a depressing truth. Sam was losing his grip on life. He was looking for crutches, and he was finding booze and pills. I told him I didn't want him to testify because he had already told his story over and over again, and because his appearance as a witness would do little except give the prosecution a chance to take potshots at him. Both these arguments were legitimate, but my overriding reason was Sam's condition. Hardly anybody knew it, but during the trial there were times when Sam was unaware of what was going on around him. I knew I couldn't let him take the stand, but I didn't tell that to the prosecution. On the contrary, I led them to believe he was going to testify. I had a good reason for the deception. The reason's name was "Frenchy," and the prosecution was keeping him in reserve in the lockup on the floor above the courtroom. Frenchy, a convict who had been in the Ohio Penitentiary at the same time as Sam, was ready to

testify for the prosecution in return for clemency. According to my information, Frenchy would claim that Sam had conspired with him to kill Spencer Houk, the part-time Mayor of Bay Village, after forcing Houk to write a suicide note in which he would exonerate Sam and implicate himself in Marilyn's death.

A brilliant maneuver

I figured the opposition would hold Frenchy as a rebuttal witness whom they would call after Sam had testified. So I played a game. "Obviously," I told people, "I'll have to put Sam on the stand." And the prosecution bought it; they held Frenchy for rebuttal. Afterward, prosecutor Corrigan told me that I surprised him by not calling Sam, that as a result he lost the benefit of Frenchy. Since the trial, others have told me that my decision to keep Sam from testifying was a brilliant maneuver. But the truth is that I had no choice. Sam simply was in no condition to testify. As it turned out, we didn't need him.

The court building was the same, and so were witnesses such as Spencer Houk and Coroner Sam Gerber. But there were important differences: the counsel on both sides, the jury, the fact that Dr. Paul Leland Kirk—the criminologist who had fine-combed Sam's house after the first trial—would be able to present his evidence. And the judge. The man who would preside over Sam's retrial was Common Pleas Judge Francis J. Taity, a no-nonsense judge who was determined to give Sam a fair trial.

The jury consisted of seven men and



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five women, most of them relatively young. When they were picked, Judge Taity ordered them sequestered at a hotel for the duration of the trial. The hotel turned out to be the one where I was staying, and I immediately moved to another.

The trial was over in about two weeks. Each day I became more certain of victory. The real weakness of the defense in Sam's first trial was that his attorneys did not have sufficient opportunity to gather evidence. This time, we had the advantage of Dr. Kirk's testimony. Also, Andy Tuney, the man who now heads my

investigation service, had started working with me. We flew around the country interviewing witnesses who had appeared for Sam in 1954. And my defense of Sam involved more than mere blocking and counterpunching. Not only will we show you that Sam didn't do it, I told the jury in my opening statement, but I think we can show you who did. We had developed circumstantial evidence indicating that Marilyn's killer was a member of the community—and that two intruders probably were in the house when Sam awoke to the sound of his wife's moans.

(continued)



"I don't mind your chattering, dear, if you
don't mind my not listening."



F. LEE BAILEY *continued*

This follows a theory that Paul Holmes outlined in his book on the Sheppard case. It fits Dr. Kirk's findings, and is supported by information indicating that Marilyn Sheppard's personal life may not have been as pure as was thought at the time of the murder. The actual killer may have been a woman who suspected her husband was having an affair with Marilyn. She may have followed him to the Sheppard house, or found them together. She kills Marilyn in a rage, and is the "form" Sam sees when he runs into the room. But her husband is still in the house, and he is Sam's assailant. We pushed this possibility at the trial, and I will leave it at that. Except to say that I think I know who killed Marilyn Sheppard, and that the killer is still alive.

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The state presented its witnesses first, and they were mainly repeats of 1954. But this time, they weren't stars.

Spencer and Esther Houk testified for the prosecution, as they had before. There were a couple of differences. One was that they were no longer a couple. They had gotten divorced in 1962, and Houk had subsequently remarried. Another difference was that their cross-examination was tougher than it had been 12 years earlier. For instance, I asked the ex-mayor why he hadn't immediately phoned the police when Sam called him for help. Why hadn't Houk brought a weapon with him? And when they arrived at the Sheppard house, how had Esther known that Marilyn was in the bedroom? For the most part, their responses were vague, their general theme being that they had not given these things much thought at the time.

And then there was Dr. Samuel Gerber, the state's number one witness at the first trial. To put it mildly, I was waiting for Dr. Gerber.

Controversial pillow

At the first trial, Dr. Gerber had gotten a lot of mileage out of the blood stains on Marilyn's pillow. He had testified that in one blood stain, "I could make out the impression of a surgical instrument." He never specified the instrument, but described the imprint as that of two three-inch-long blades, with indentations at the end of each blade, as if they had teeth.

When Dr. Kirk examined the murder room after the first trial, he, too, had something to say about the pillow. But his findings had little in common with those of Dr. Gerber. In the affidavit he submitted after his study, Dr. Kirk said: "The pillow from the victim's bed indicates far more than was stated or implied in the testimony regarding it. Solid regions of blood-stain are present on both sides of the pillowcase. . . . Blood spatter from the blows themselves shows that the side opposite to the alleged instrument mark was upward during the beating. . . . It is certain that the pillow was either used to prevent outcry earlier, or that the victim attempted to shield herself by holding the pillow over her face or head. In either case the pillow had to be moved at a subsequent time, and was probably doubled down on itself and folded in such a manner as to produce a mirror-image blood impression later interpreted as an instrument impression."

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Corrigan avoided the surgical instrument theory when Gerber took the stand for direct examination. The coroner was shown the pillow, but just said the impression was that of some "object." Evidently, Corrigan realized the surgical instrument gambit wouldn't get by this time. But I figured that Gerber still supported it. So on cross-examination, I pushed for what he actually saw in the imprint. He didn't disappoint me. "It looked like a surgical instrument to me," he said.

His head was in the noose, and I smiled as I tightened it. "Dr. Gerber," I said, "just what kind of surgical instrument do you see here?"

"I'm not sure," he said.

"Would it be an instrument you have handled?"

"I don't know if I've handled one or not."

"Of course," I asked, "you have been a surgeon, haven't you, Doctor?"

The doctor admitted he hadn't.

"Would you by chance have with you at the moment the instrument you say you see?"

No, he didn't.

"Do you have such an instrument back at your office?"

Dr. Gerber shook his head.

I pulled the noose all the way in. "Have you ever seen such an instrument in any hospital, or medical supply catalog, or anywhere else?"

"No, not that I can remember," he answered.

"Tell the jury, Doctor, where you have searched for the instrument during the last twelve years."

I couldn't have asked for a better answer. "Oh," said Gerber, "I have looked all over the United States."

"My goodness," I said. "Then, please, by all means tell us what you found."

There was a pristine beauty to his reply. "I didn't find one," he said.

"Now, Doctor," I asked, "you know that Sam Sheppard was and is a surgeon, don't you?"

The coroner nodded.

"And you didn't describe this phantom impression as a surgical instrument just to hurt Sam Sheppard's case, did you, Doctor?"

"Ob no," said the man who had done his best to nail down Sam Sheppard's conviction.

"Get the Sheppards"

I had a few other questions for the doctor.

"Did you, Coroner Gerber, tell a young intern about a month before Marilyn was murdered that you intended to 'get' the Sheppards?"

"Any man who says that is a liar!" Gerber yelled.

"On the day of the murder, didn't Dr. Charles Elkins, a prominent neurologist, tell you that Sam was badly hurt?"

"No, he didn't."

"Didn't you permit several children to go through the house on the morning of the murder?"

No, said Gerber. He also had the same answer for the next question, which was whether he had told a reporter during the week following the crime that he thought the murderer was a woman.

The denials eventually gave the jury something to think about. When the defense's turn came, we produced two witnesses who stated Gerber had done or said what he denied. (continued)

F. LEE BAILEY *continued*

Our star witness was Dr. Kirk.

For a better understanding of his methods and findings, let's take a quick look at the room's geography. There were twin beds, both with their heads against the south wall. The door to the ball was located at the east end of the south wall, and was open at the time of the murder. It was swung back against the east wall near the closed door of a closet. One of the facts that struck Dr. Kirk was that there was an area of about two feet at the end of the north wall, merging with an area of about four feet at the north end of the east wall, where there was no blood. This area would have contained spots similar to those found elsewhere in the room unless something intercepted them. That something, he reasoned, was the killer. By diagramming the room and then drawing lines from the outer limits of the bloodless area to the center of Marilyn's bed, he pinpointed the attacker to the east side of the bed near its foot.

Dr. Kirk was able to determine which spots on the walls had spattered from Marilyn's wounds and which had been thrown off by the murder weapon. Careful investigation of the spots on the east wall, many of them on the hall and closet doors, enabled him to compute the weapon's arc. However, the spots on the doors contrasted with others in the room in that they resulted from low-velocity drops that had struck at nearly right angles. Experiments showed that these spots must have come from the weapon's back swing. Dr. Kirk reasoned that the swing had to be sideways rather than vertical, since there was no blood on the ceiling. The attacker's position in the room and the pattern of the blood spots led to the conclusion that the killer had swung the weapon with his left hand. The arc indicated that the weapon used was no more than one foot long.

Unidentified witness

Consequently, Dr. Kirk was able to tell us such things as where the killer stood, which hand the killer used, and the approximate size of the weapon. He was also able to establish that a large blood spot on the closet door had been left open by someone other than the Sheppards.

Others called by the defense included a witness I'll leave unidentified, whose testimony pointed in the direction of a possible suspect other than Sam. Two defense witnesses attested to the serious injuries Sam had suffered the night of the murder. One was Sam's dentist, Dr. Richard Koch, who testified that he had examined Sam shortly before the murder and

two weeks after it occurred. He said the second examination showed that two of Sam's teeth had been broken, and that his mouth had been badly cut. He said Sam could not have caused the damage himself.

The other was Dr. Elkins, who had helped Sam start his practice. Dr. Elkins testified that he gave Sam an intensive neurological examination two days after the crime and found that he had suffered a fracture of the third

went upstairs to my room to wait. I stayed at the hotel bar. At 9:30 P.M. there was a phone call. It was Judge Talty. He told me the jury had not yet reached a verdict, and he was sending them to their hotel for the night. We had to be at the courthouse when the judge sent the jury to bed.

When we got to the courtroom, the judge had a surprise for us. While we were on our way over, the jurors had reached a verdict. It was 10:20 P.M.

slammed the table in front of us. "It's about time!" he said.

"Hold on, Sam," I told him. "This is still an open court." But I sure couldn't blame him.

Sam Sheppard had won his freedom and he won his exoneration. But he couldn't win back his life.

He couldn't get it back professionally, and he couldn't get it back personally. Ten years of jail, and then two years of strain and tension. Booze and pills, and the end of a man. In 1967, the Ohio Medical Board gave him back his license to practice. As was the case with most of the amends society made to Sam Sheppard, it came too late. The following year, he joined the staff of a hospital in Youngstown, Ohio. Within months, he was sued for malpractice in the death of a patient. He quit his job, and next day there was another parting. Ariane filed for divorce.

Pathetic last effort

Sam moved to Columbus, and tried without much success to make a go of private practice. Finally, he made a pathetic attempt to cash in on his name by becoming a small-time professional wrestler. In October 1969, he married Coleen Strickland, his manager's 20-year-old daughter.

A few months later, I had dinner with Sam. The fire inside him was out. "I doubt that I'll be alive six months from now," he said.

He was right. On April 6, 1970, Samuel H. Sheppard was found dead in his home. His wife said he had been violently ill the previous night, and that he had the flu. But the cause of death was found to be a cerebral hemorrhage. He was 46 years old.

I was a pallbearer at Sam's funeral. I remember that his manager was wearing a sport coat, plaid shirt and a tie with a Hawaiian dancing girl on it. The mourners included a group of young hot-rodders whom Sam had befriended. And, of course, newspaper and television people were present. Sam's casket was lowered into the grave and covered with dirt. As I walked away, the cameras were still grinding.

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